

BY FAX

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Telephone: 310-248-3830
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Attorneys for Petitioner
BBC Worldwide Limited t/a BBC Studios (Distribution)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 18 80 130 MISC

IN RE: DMCA SECTION 512(h)
SUBPOENA TO DISCORD, INC.

Case No.:

DECLARATION OF DAVID K. CAPLAN
IN SUPPORT OF BBC WORLDWIDE
LIMITED T/A BBC STUDIOS
(DISTRIBUTION)'S REQUEST TO THE
CLERK FOR ISSUANCE OF A
SUBPOENA PURSUANT TO 17 U.S.C. §
512(h) TO IDENTIFY ALLEGED
INFRINGEMENT(S)

DECLARATION OF DAVID K. CAPLAN

I, David K. Caplan, declare as follows:

1. I am a partner with the law firm of Kilpatrick Townsend & Stockton LLP, counsel of record for Petitioner BBC Worldwide Limited t/a BBC Studios (Distribution) ("BBC Studios"). I have personal knowledge of the facts contained herein and, if called upon to do so, could and would testify competently thereto.
2. I submit this declaration in support of BBC Studios' request for issuance to Discord, Inc. ("Discord"), owner and operator of the websites <cdn.discordapp.com> and <media.discordapp.net>, of a subpoena pursuant to the Digital Millennium Copyright Act

DECL. OF DAVID K. CAPLAN ISO BBC WORLDWIDE
LTD.'S REQUEST FOR ISSUANCE OF A DMCA SECTION
512(H) SUBPOENA TO DISCORD, INC.

KILPATRICK TOWNSEND & STOCKTON LLP
9720 WILSHIRE BLVD, PH
BEVERLY HILLS, CA 90212
310-248-3830

1 (“DMCA”), 17 U.S.C. § 512 (h) (the “Subpoena”), to identify one or more alleged infringers
2 whom BBC Studios is informed and believes posted copyrighted photographic content from
3 Season 11, Episode 1 of Doctor Who (the “Infringing Content”) on systems operated by Discord
4 without BBC Studios’ authorization.

5 3. On June 25, 2018, and July 31, 2018, BBC Studios submitted notifications via email
6 identifying the Infringing Content on Discord’s systems and providing the information required by
7 17 U.S.C. § 512(c)(3)(A). Attached hereto as **Exhibit 1** are true and correct copies of the
8 notifications sent on June 25, 2018, and July 31, 2018, to Discord.

9 4. The purpose for which the Subpoena to Discord is sought is to obtain the identity of
10 the alleged infringer (or infringers) and such information will only be used for the purpose of
11 protecting rights under title 17 U.S.C. §§ 100, *et seq.*

12 5. A true and correct copy of BBC Studios’ proposed Subpoena to Discord is attached
13 hereto as **Exhibit 2**.

14 I declare under penalty of perjury under the laws of the State of California and United
15 States of America that the foregoing is true and correct.

16 Executed on August 2, 2018, at Beverly Hills, California.

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19 David K. Caplan
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EXHIBIT 1

Marcin Przasnyski

Od: Anti-Piracy Protection <copyright.az@antipiracyprotection.info>
Wysłano: 25 June 2018 21:47
Do: abuse@discordapp.com
Temat: Notice of Copyright Infringement

Anti-Piracy Protection Łukasz Czekajewski
Dominikańska 21b
02-738 Warsaw
Poland
copyright.az@antipiracyprotection.info
tel. +48602227227

Recipient Name and Address
discordapp.com
Notice of Copyright Infringement

Dear discordapp.com

I, Łukasz Czekajewski, of Anti-Piracy Protection am contacting you on behalf of BBC (British Broadcasting Corporation). Under penalty of perjury, I certify that I am authorized to act on behalf of BBC (British Broadcasting Corporation), an owner of copyrights to the films and TV series worldwide.

A search has detected that your web site, discordapp.com is providing access to video files that infringe BBC (British Broadcasting Corporation) distribution rights in the movies listed below. I have a good faith belief that this video content that is described above has not been authorized for use, posting, sharing or distribution, on discordapp.com by BBC (British Broadcasting Corporation), its agent or the law. Therefore, I request that you act expeditiously to remove or disable access to the infringing content identified in this notice, and cease and desist from any further infringement of BBC (British Broadcasting Corporation) distribution rights.

I assert that the information in this notice is accurate to the best of my knowledge, information and belief.

Infringed movie licensed to BBC (British Broadcasting Corporation):

Doctor Who (2005)

URL/location of infringing content to be disabled or removed:

<https://media.discordapp.net/attachments/460846758071894038/460846841471434752/sonic.jpg?width=655&height=332>

Authorisation Letter: http://antipiracyprotection.info/authorizations/bbc/BBC_APP_LoA_EN.pdf

In complying with this notice, discordapp.com should not destroy any evidence which may be relevant in a lawsuit, relating to the infringement alleged, including all associated electronic documents and data relating to the presence of the infringing items on your network, which shall be preserved while disabling public access, irrespective of any document retention or corporate policy to the contrary.

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Please note that this letter is not intended as a full statement of the facts, and does not constitute a waiver of any rights to recover damages incurred by virtue of any unauthorized or infringing activities, occurring on your network. All such rights, as well as claims for other relief, are expressly reserved.

If you need to contact me, I can be reached at the above address.

With Kind Regards,

Łukasz Czekajewski
Anti-Piracy Protection

Anti-Piracy Protection Lukasz Czekajewski
Dominikanska 21b
02-738 Warsaw
Poland
copyright.az@antipiracyprotection.info
tel. +48602227227

Recipient Name and Address
discordapp.com
Notice of Copyright Infringement

Dear discordapp.com

I, Lukasz Czekajewski, of Anti-Piracy Protection am contacting you on behalf of BBC (British Broadcasting Corporation). Under penalty of perjury, I certify that I am authorized to act on behalf of BBC (British Broadcasting Corporation), an owner of copyrights to the films and TV series worldwide.

A search has detected that your web site, discordapp.com is providing access to images that infringe BBC (British Broadcasting Corporation) distribution rights in the movie listed below. I have a good faith belief that this content that is described above has not been authorized for use, posting, sharing or distribution, on discordapp.com by BBC (British Broadcasting Corporation), its agent or the law. Therefore, I request that you act expeditiously to remove or disable access to the infringing content identified in this notice, and cease and desist from any further infringement of BBC (British Broadcasting Corporation) distribution rights.

I assert that the information in this notice is accurate to the best of my knowledge, information and belief.

Infringed movie licensed to BBC (British Broadcasting Corporation):

Doctor Who (2005)

URL/location of infringing content to be disabled or removed:

<https://cdn.discordapp.com/attachments/441652227526885376/460860386560835584/unknown.png>

<https://cdn.discordapp.com/attachments/441652227526885376/460860445809573888/unknown.png>

Authorisation Letter:

http://antipiracyprotection.info/authorizations/bbc/BBC_APP_LoA_EN.pdf

In complying with this notice, discordapp.com should not destroy any evidence which may be relevant in a lawsuit, relating to the infringement alleged, including all associated electronic documents and data relating to the presence of the infringing items on your network, which shall be preserved while disabling public access, irrespective of any document retention or corporate policy to the contrary.

Please note that this letter is not intended as a full statement of the facts, and does not constitute a waiver of any rights to recover damages incurred by virtue of any unauthorized or infringing activities, occurring on your network. All such rights, as well as claims for other relief, are expressly reserved.

If you need to contact me, I can be reached at the above address.

With Kind Regards,

Lukasz Czekajewski
Anti-Piracy Protection

EXHIBIT 2

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re: DMCA Subpoena to Discord, Inc.

Plaintiff

v.

Defendant

Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Discord, Inc., Attn: Ruth Chang, 444 De Haro Street, Suite 200, San Francisco, CA 94107

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Kilpatrick Townsend & Stockton LLP, Attn: David
Caplan, 9720 Wilshire Blvd PH, Beverly Hills, CA 90212

Date and Time:

August 16, 2018, 5:00pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 8/2/18

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

BBC Worldwide Limited t/a BBC Studios (Distribution), who issues or requests this subpoena, are:

David Caplan, 9720 Wilshire Blvd PH, Beverly Hills, CA 90212; dcaplan@kilpatricktownsend.com; 310-777-3722

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*I received this subpoena for *(name of individual and title, if any)* _____on *(date)* _____☐ I served the subpoena by delivering a copy to the named person as follows: __________ on *(date)* _____ ; or☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

*Server's signature*_____
*Printed name and title*_____
Server's address

Additional information regarding attempted service, etc.: _____

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DOCUMENTS TO BE PRODUCED UNDER SUBPOENA

1. All information that may identify the alleged infringer who posted infringing content located at the following Discord links:
<https://discordapp.com/channels/221809357321535490/>,
<https://media.discordapp.net/attachments/460846758071894038/460846841471434752/sonic.jpg>,
<https://cdn.discordapp.com/attachments/441652227526885376/460860386560835584/unknown.png>, and
<https://cdn.discordapp.com/attachments/441652227526885376/460860445809573888/unknown.png>, including, without limitation, any name, account name, address, telephone number, email address, birth date, profile photo, device information (e.g., IP address, device type, name, operating system, MAC address or other identifiers), browser information, location information, information from others (e.g., Facebook or Google+) and time posted.